IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2921 of 2003

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANAGER A.M.T.S. - Petitioner(s)

Versus

GULAMNABI NOORBHAI AJMERI - Respondent(s)

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Appearance :

MR MG NAGARKAR for Petitioner(s) : 1,

MR VM DHOTRE for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 20/01/2006

ORAL JUDGMENT

1. This petition is directed against the award dated 24.5.2002 passed by the Labour Court, Ahmedabad in Reference (LCA) No.1723 of 2000 whereby the petitioner was directed to reinstate the respondent on his original post with 75% back wages.

2. The short facts of the case are that the respondent was working with the petitioner as a driver. The respondent was arrested in connection with a complaint in connection with an attempt of theft and thereafter he was released on bail. The respondent thereafter threatened the watchman who caught the respondent while attempting to commit theft. The respondent was, therefore, suspended from service and departmental inquiry was conducted against him. Ultimately at the conclusion of the inquiry the respondent was dismissed from service. He, therefore, raised a dispute which was referred to the Labour Court and the Labour Court passed the award in question which is challenged in the present petition.

3. In pursuance of the award the petitioner reinstated the respondent on his original post.

4. Learned counsel for the petitioner submitted that it is only because of the fact that the petitioner did not want to make any idle wages, the petitioner has reinstated the respondent. He submitted that the Labour Court has not given any reasons for grant of 75% back

wages. He further submitted that even otherwise, looking to the conduct of the petitioner he is not entitled to any back wages and therefore the Labour Court has committed an error in awarding back wages.

5. Learned counsel for the respondent submitted that the Labour Court has considered all the facts and circumstances of the case and the alleged misconduct was not proved. He, therefore, submitted that there was no justification for grant of back wages.

6. There is no dispute that the respondent has been arrested for the alleged attempt of committing theft. On being released on bail, he has threatened the watchman with dire consequences. However, the two witnesses has not supported the evidence before the Inquiry Officer. The Labour Court has lost sight of the fact that this is not a criminal trial where things are required to be proved beyond doubt. Since there are serious allegations against the respondent and there is a loss of property to the petitioner Corporation, I am of the view that the Labour Court has committed an error in granting reinstatement. However, being a public authority, the petitioner has reinstated the respondent in pursuance of

the award in question. Therefore, it would not be appropriate for this Court to interfere with the award of reinstatement.

7. As regards the back wages is concerned, the Labour Court merely observed that being a technical person he would not have sat idle the Labour Court has granted back wages to the extent of 75%. A bare perusal of the award shows that the Labour Court has not given any cogent and convincing reasons for grant of back wages.

8. The law on the subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such

order. Similar view has been taken in the cases of A.P. State Road Transport Corporation and Ors. V. Abdul Kareem, reported in (2005)6 SCC 36, and U.P. State Brassware Corpn. Ltd. & Anr. V. Udai Narain Pandey, reported in 2005 AIR SCW 6314. It is also required to be noted that in the case of U.P.S.R.T.C. V. Mahendra Nath Tiwari, reported in 2005 AIR SCW 6042, the Supreme Court observed that considering the serious misconduct the workman is not entitled to back wages. In above view of the matter, I am of the opinion that the respondent cannot be said to be entitled for back wages.

9. In the result, the petition is partly allowed. The impugned award qua back wages is quashed and set aside. The award of reinstatement with continuity of service is confirmed. The award of the Labour Court is modified to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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